No. 99-1088

IN THE

Supreme Court of the United States

BRYAN R.,

Petitioner,

v.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Was the Maine Supreme Judicial Court correct in holding that, under Maine's common law, neither a church nor its elders have a duty to protect church members from harming each other?

LIST OF PARTIES[1]

Petitioner:
Bryan R.

Respondents:
Watchtower Bible and Tract Society of New York, Inc.
Patrick LaBreck
Robert Wells

STATEMENT PURSUANT TO RULE 29.6

Respondent, Watchtower Bible and Tract Society of New York, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock.

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1. This information is included as it was absent from the petition for a writ of certiorari.

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The Respondents Watchtower Bible and Tract Society of New York, Inc., Patrick LaBreck, and Robert Wells, respectfully request that this Court deny the petition for a writ of certiorari seeking review of the Maine Supreme Judicial Court's opinion in this case. That opinion is reported at 738 A.2d 839 (Me. 1999).

STATEMENT OF THE CASE

As a teenager, Petitioner Bryan R. was sexually abused by his next-door neighbor, Larry Baker. They both were members of the same religious congregation during the time period of the abuse. Petitioner Bryan R. brought suit against Mr. Baker, and included as defendants elders of his church: Robert Wells, Patrick LaBreck, and his stepfather.

Before abusing the Petitioner, Mr. Baker had molested a minor member of the congregation. As a result of that incident, Messrs. Wells, LaBreck, and Petitioner's stepfather, in their role as a congregational judicial body, removed Mr. Baker from the status of congregational "ministerial servant," issued private rebuke, and temporarily forbade him from having any contact with minor members of the congregation. They did not make a public announcement of Mr. Baker's actions to the congregation.

Mr. Baker was an ordinary member of the congregation when he molested Petitioner. There is no allegation that Mr. Baker was an agent or employee of the congregation. There is no claim that Mr. Baker occupied any clerical position as a priest, minister, or pastor. There is no allegation that the congregation elders affirmatively placed Mr. Baker in a position of control and supervision of children, or that they knowingly placed him in a position where he could sexually

abuse children in a church setting. There is no allegation that Mr. Baker molested the Petitioner during any church activity. There is no allegation that Mr. Baker was ever restored to his former status as a "ministerial servant." Petitioner alleged that upon becoming aware of Mr. Baker's prior wrongdoing, the elders should have excommunicated him. Petitioner asserts that because they did not excommunicate Mr. Baker and later allowed him to resume activities of an ordinary church member, the elders breached a duty owed to him. Petitioner also included as a defendant the congregation's national religious organization, the Watchtower Bible and Tract Society of New York, Inc., contending that it, too, breached a duty owed to him.

Petitioner's stepfather was dismissed from the action and judgment against Mr. Baker was entered by stipulation, leaving as sole defendants Mr. Wells, Mr. LaBreck, and the Watchtower Bible and Tract Society of New York, Inc. Petitioner's complaint against the remaining defendants contained three causes of action based only upon Maine common law: Count I Breach of Fiduciary Duty, Count II Intentional Infliction of Emotional Distress, and Count III Negligent Infliction of Emotional Distress. On August 18, 1998, Superior Court Justice Susan Calkins, Cumberland County, State of Maine, granted Respondents' motion to dismiss for failure to state a claim. (Pet. 18a-24a). On October 18, 1999, the Maine Supreme Judicial Court unanimously affirmed the dismissal. (Pet. 1a-17a).

REASONS FOR DENYING THE WRIT

I. The Decision Below Does Not Raise the Question Presented in the Petition.

The sole question presented in the petition is whether "the First Amendment precludes a civil court from holding a religious organization liable for its negligent or reckless or intentional failure to stop a known, adult, child molester member of the church from sexually abusing another child member of the religion." (Pet. i) The Maine Supreme Judicial Court did not expressly address that question in this proceeding. Rather, the court found that, under Maine common law, Respondents owed Petitioner no duty to protect him from other members of the church. For this reason, the petition should be dismissed.

After effectuating a settlement with the perpetrator, Mr. Baker, and dismissing all claims against his elder/ stepfather, Petitioner continued the case against the elders and national religious organization, attempting to establish liability by means of a variety of state common law theories. The Maine Supreme Judicial Court rejected these efforts to hold third parties liable for the wrongdoing committed by one parishioner upon another.

Contrary to Petitioner's broadly-stated "Question Presented," the lower court did not issue a sweeping ruling based on Constitutional law. Rather its decision to reject the imposition of a generalized fiduciary duty on the part of a church to protect members of its congregation from other members was based on state common law grounds:

> We decline to recognize a general common law duty on the part of an organization such as a church to protect its members from each other. Accordingly, we do not reach the constitutional issue. (Pet. 10a)

It was on this basis that the lower court dismissed the count based on breach of fiduciary duty. It was also from this foundation that the court's dismissal of the common law counts of intentional and negligent infliction of emotional distress flowed. Therefore, the court did not decide the question presented in the petition.[2]

II. This Court Lacks Jurisdiction to Review a State Court Decision Based on Independent and Adequate State Grounds of State Common Law or State Constitutional Law.

The petition for a writ of certiorari must be denied since this case is not within this Court's appellate jurisdiction. Title 28 U.S.C. § 1257(a) does not permit review of a state's highest court's final judgment when that judgment is predicated on state law. The judgment of the Maine Supreme Judicial Court was predicated upon state common law and the Maine Constitution. Therefore, this Court lacks jurisdiction to review the judgment and the petition must be denied.

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2. Petitioner failed to adhere to Sup. Ct. R. Rule 14(g)(i) in not specifying the stage of the proceedings when and how the federal questions sought to be reviewed were raised, or how they were passed on by the lower courts. Sup. Ct. R. Rule 14(4) permits this Court to deny the petition for petitioner's failure to present with accuracy, brevity and clarity the information essential for a ready and adequate understanding of the points requiring consideration.

Petitioner's complaint posed no issue involving a state statute. "Because a common-law cause of action cannot be said to be a 'statute' for purposes of § 1257(2), this case is not within our § 1257(2) appellate jurisdiction." *Local 926, International Union of Operating Engineers v. Jones*, 460 U.S. 669, 675 n.7 (1983). Although commenting on 28 U.S.C. § 1257(a)'s predecessor, this Court's analysis that the common law is not the equivalent of a "statute" to convey jurisdiction underscores that Petitioner's common-law claims cannot serve as a predicate for this Court's jurisdiction. Therefore, this is not a matter "where the validity of . . . a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." 28 U.S.C. § 1257(a).

The complaint against the elders and national religious organization put forth causes of action exclusively grounded in Maine common law — breach of fiduciary duty, negligent infliction of emotional distress, and intentional infliction of emotional distress. The Maine Supreme Judicial Court applied Maine law in declining to recognize a common law duty on the part of the Respondents to protect parishioners from each other. Thus, this Court lacks jurisdiction to review that decision.

A. Dismissal of breach of fiduciary duty count was based solely on Maine's common law.

In dismissing the breach of fiduciary duty count, Maine's Supreme Judicial Court explicitly based its decision on state common law:

> On the facts alleged in the complaint, we conclude that Bryan has failed to plead a fiduciary

> relationship with sufficient particularity, and we decline to recognize a general common law duty on the part of an organization such as a church to protect its members from each other. Accordingly, we do not reach the constitutional issue.

(Pet. 10a).

Since this count was dismissed solely upon state common law grounds and no constitutional issue was addressed by the court below, this Court lacks jurisdiction to review the decision in the fiduciary duty issue.

B. Dismissal of the negligent infliction of emotional distress count was based on independent and adequate state grounds of Maine's common law.

Petitioner does not claim that he was deprived of a Constitutional right by the lower court's decision. Rather, he contends that the lower court's interpretation of the First Amendment barred him from pursuing state court remedies. Assuming, arguendo, that such contention is both raised by the Maine Supreme Judicial Court's dismissal of the negligent and intentional infliction of emotional distress counts and falls within "any title, right, privilege, or immunity . . . specially set up or claimed under the Constitution," 28 U.S.C. § 1257(a), this Court nonetheless lacks jurisdiction, since the decision of the Maine Supreme Judicial Court rests on independent and adequate state grounds.

A Constitutional issue is not implicated in the lower court's dismissal of the negligent infliction of emotional distress count. Ecclesiastical matters were only mentioned in passing. Further, the lower court based its dismissal of

this portion of Petitioner's case upon alternate state grounds, refusing to apply a pure tort law foreseeability analysis, citing *Cameron v. Pepin*, 610 A.2d 279, 284 (Me. 1992); *Bolton v. Caine*, 584 A.2d 615, 618 (Me. 1990); *Gammon v. Osteopathic Hosp. of Me. Inc.*, 534 A.2d 1282, 1285 (Me. 1987); and *Rowe v. Bennett*, 514 A.2d 802, 806-07 (Me. 1986). The Maine court held: "We have never recognized a relationship between churches and their members of the type that would give rise to a duty to avoid psychic injury to those members." (Pet. 17a). The presence of these independent and adequate state grounds for dismissal deprives this Court of jurisdiction.

C. Dismissal of the intentional infliction of emotional distress count was based on the unique facts of this case as well as on independent and adequate state grounds of Maine's constitution.

In analyzing whether Petitioner established a cause of action for intentional infliction of emotional distress claim under Maine's common law, the court did touch on the First Amendment. However, its decision was predicated upon the unique facts of the case, as well as both the United States and Maine Constitutions:

> On these facts, however, we conclude that the effort to hold the church responsible, in addition to the wrongdoer himself, would require direct inquiry into the religious sanctions, discipline, and terms of redemption or forgiveness that were available within the church in the context of this claim, an inquiry that would require secular investigation of matters that are almost entirely ecclesiastical in nature.

> State courts may not interfere in matters concerning religious doctrine or organization.

(Pet. 15a-16a).

The Maine Supreme Judicial Court, on the unique facts of this case, correctly refused to extend liability to elders who, while removing a wrongdoer from his ministerial position, maintained the confidentiality of confessional communications. The court's refusal to permit second-guessing of a religiously based decision was not only based upon the unique facts of this case, but also on an independent and adequate state ground, namely the court's prior decision in *Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441 (Me. 1997). In *Swanson,* the court noted:

> The First Amendment to the United States Constitution and Art. I. § 3[3] of the Maine

3. This section of the Maine Constitution states:

> All individuals have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in that person's liberty or estate for worshipping God in the manner and season most agreeable to the dictates of that person's own conscience, nor for that person's religious professions or sentiments, provided that that person does not disturb the public peace, nor obstruct others in their religious worship; — and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by

(Cont'd)

> Constitution both guarantee citizens the right to freely exercise their chosen religion and forbid the establishment of religion by the government. When interpreting these guarantees, courts have generally held that states are forbidden from interfering in matters concerning religious doctrine or organization.

The Maine Supreme Judicial Court's refusal to extend the common law tort of intentional infliction of emotional distress to encompass Petitioner's claim is a continuation of its long-standing reliance upon Maine's constitution. In *Swanson,* the court held that in cases with religious overtones, "courts have failed to maintain the appropriate degree of neutrality required by the United States and Maine Constitutions." *Id.* at 445. The *Swanson* court relied upon its decision in *Graffam v. Wray,* 437 A.2d 627 (Me. 1981), which held: "Cognizant though we are of the wall of separation between church and state, erected by our organic law, we recognize that there are certain circumstances where the courts may intervene in church schisms which affect church property." *Id.* at 629 (footnotes omitted). "Our organic law" is Art. I. § 3 of the Maine Constitution. *Id.* The Maine Constitution was, and is, the foundation of the court's decisions — from *Graffam* to *Swanson* to *Rees.* This "organic law," the Maine Constitution, is an independent and adequate state ground. Because the lower court decision was founded

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(Cont'd)

> law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

on such ground, this Court cannot exercise jurisdiction over the intentional infliction of emotional distress count.

Even though the Maine Supreme Judicial Court's decision alluded to the United States Constitution, this Court does not obtain jurisdiction. This Court has consistently held that there is no review of state court decisions resting on state law grounds that are independent of any federal question and adequate to support the judgment. *Lambrix v. Singletary,* 520 U.S. 518, 522-23 (1997); *Coleman v. Thompson,* 501 U.S. 722, 729 (1991). The petition should be dismissed.

III. There Is No Compelling Reason to Grant the Writ Since There Exists No Conflict of Decisions Among State Courts of Last Resort or a United States Court of Appeals.

Petitioner contends that there is a "split among state courts as well as among federal circuits" (Pet. i) with respect to the First Amendment's application to religious organizations and sexual abuse of children. This contention finds no support in his cited cases. No case cited by Petitioner involves the establishment of liability against a religious organization or minister for the sexual abuse performed by one member of the congregation against another member of the congregation.[4]

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4. The weakness of Petitioner's argument is manifested by his reliance on *Davis v. Beason,* 133 U.S. 333 (1890), and *Reynolds v. United States,* 98 U.S. 145 (1878), to suggest that this Court has previously infringed on the interests of Jehovah's Witnesses. (Pet. 10-12). *Davis* and *Reynolds* involved members of the Church of Jesus Christ of Latter-Day Saints, known as the Mormon Church. Jehovah's Witnesses have never espoused a belief in polygamy.

The cases cited by Petitioner involve sexual abuse committed by a priest, a pastor, a nun, or a deacon. There is no such allegation in this case.[5] For that reason alone, Petitioner finds no support among his citations.

With respect to Petitioner's list of cases purportedly holding "that the First Amendment does bar tort liability" (Pet. ii), three cases[6] are not decisions of state courts of last resort or of a United States Court of Appeals. Therefore, they cannot serve as a predicate for this Court's granting review of this matter. Sup. Ct. R. Rule 10(b).

The remaining cases cited provide little support for Petitioner's claim of a split of authority. *N.H. v. Presbyterian Church*,[7] 1999 WL 1013547 (Okla. 1999) (unreported), specifically did not reach a Constitutional issue:

> Under the facts presented, we hold that the national organization is not liable for Brigden's tortious conduct. Because no basis exists to impose liability against the national organization, we decline . . . to determine whether the First

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5. In fact, Maine's Supreme Judicial Court expressly did not address the liability of a church for the wrongdoing of its employee or agent in causing injury to a child. (Pet. 5a n.2).

6. *Schmidt v. Bishop*, 779 F. Supp. 321 (S.D.N.Y. 1991); *Langford v. Roman Catholic Diocese of Brooklyn*, 677 N.Y.S.2d 436 (Sup. Ct. 1998); *Doe v. Evans*, 718 So. 2d 286 (Fla. Dist. Ct. App. 1998).

7. The opinion contains the following notice: "This opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal." *Id.* at 1.

> Amendment stands as a bar to all employment-related liability of an ecclesiastical organization for its ministerial officers.

Id. at 1.

> Although we do not reach the constitutional issue found dispositive by the trial court, the summary judgment ruling is affirmed. Our holding is based on Oklahoma law which provides bona fide, separate, adequate and independent grounds for our decision.

Id. at 6 (footnotes omitted).

Equally unavailing is *L.L.N. v. Clauder*, 209 Wis. 2d 674, 563 N.W.2d 434 (1997). Although the Supreme Court of Wisconsin did reach a holding on Constitutional grounds, it also reached the same result on independent and adequate state common law grounds:

> [E]ven if we assume that the First Amendment does not preclude L.L.N.'s claim, we conclude that the undisputed facts and all reasonable inferences drawn therefrom do not establish a genuine issue of material fact as to whether the Diocese knew or should have known about Clauder's alleged propensity to use his position as chaplain to sexually exploit patients whom he counseled. Thus, the Diocese is entitled to summary judgment as a matter of law on this basis as well.

Id. at 678, 563 N.W.2d at 437.

To the same effect is the remaining case cited by Petitioner, *Ayon v. Gourley*, 47 F. Supp. 2d 1246 (D. Colo. 1998), *aff'd*, 185 F.3d 873 (CA10 1999). The court in *Ayon* reached a constitutional issue, but reached the same result on independent and adequate alternate state common law grounds: "Consequently, summary judgment must be granted for Defendants on all Plaintiff's claims based on the statute of limitations." *Id.* at 1255.

There is not one decision of any other court that deals with the unique fact pattern presented in the court below. Thus, there is no conflict of decisions about the applicability of the First Amendment in determining the liability of a church for the wrongful action of one of its members against another member. There is no compelling reason to grant the petition for a writ of certiorari. The petition must be dismissed.

IV. Petitioner Has Abandoned His Case Against Mr. Wells and Mr. LaBreck.

Petitioner has abandoned his case against Mr. Wells and Mr. LaBreck. Petitioner's "Question Presented" only focuses on the liability of the corporate defendant: "Does the First Amendment preclude a civil court from holding a religious organization liable . . . ?" (Pet. I). Further, his "Statement of the Case" exclusively focuses on the liability of the organization: "The fundamental question is whether a religious organization may invoke the First Amendment. . . ." (Pet. 1).

Since Mr. Wells and Mr. LaBreck are not listed by Petitioner as parties before this Court, are not addressed once by name in Petitioner's discussion of "Reasons for Granting

the Writ," and are not identified in Petitioner's "Question Presented" or "Statement of the Case," the case against them has been abandoned. The decision of the Maine Supreme Judicial Court, as to Mr. Wells and Mr. LaBreck, should stand.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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